# In the Supreme Court of the United States

## No. 486.

**OCTOBER TERM, 1947.**

TIGHE E. WOODS,
Housing Expediter, Office of the Housing Expediter,
*Appellant,*

vs.

THE CLOYD W. MILLER CO.,
a Corporation, and
CLOYD W. MILLER,
*Appellees.*

## BRIEF FOR APPELLEES.

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## BRIEF FOR APPELLEES.

### QUESTION NOT PRESENTED.

Specification 3 in appellant's brief, that is, whether the Act violates the due process clause of the Fifth Amendment, is not included in the assignment of errors (R. 32) or in the statement of points to be relied upon filed by the appellant (R. 35).

The question is raised whether this specification can be considered here.

### STATUTE INVOLVED.

The sole question here is whether the law is invalid, as appellees contend. This being so, no regulation of the Expediter is involved.

The pertinent sections of Title II of the Housing and Rent Act of 1947, Pub. Law 129, 80th Cong., 1st Sess., 50 U. S. C. A. App., Paragraph 901, *et seq.*, are printed verbatim in the Appendix, pp. 26-34. It is hereinafter called the "Act" or the "1947 Act."

It was enacted on June 30, 1947, and effective July 1, 1947. In Section 201 (a) it reaffirms "the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would tend to prevent the attainment of the goals therein declared." The reference is to Section 3 a (2) Price Control Extension Act of 1946, Chapter 671, Pub. Law 548, 1946 U. S. C. A. Cong. Supp., page 632. It is quoted here verbatim:

> "That unnecessary or unduly prolonged controls over prices and rents and uses of subsidies would be inconsistent with the return to such a peacetime economy and would tend to repress and prevent the attainment of this and other goals herein declared;"

This is Section 1 A (a) (2) of the Emergency Price Control Act of 1942 as amended, 56 Stat. 23, 50 U. S. C. A. App., Paragraph 901, *et seq.* This Act will be hereinafter called the 1942 Act.

It is further declared in Section 201 (b) of the Act that it is the intention to terminate as early as practicable all federal restrictions on rents, but that an "emergency exists" and for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period it is necessary for a limited time to impose certain restrictions upon rents.

The Act in substance provides as follows, with section numbers designated:—*202. Definitions*; (b) housing accommodations, and (c) "Controlled Housing Accommodations," which are "housing accommodations" except that it does not include (1) hotels, (2) motor courts and (3) accommodations completed or converted after February 1, 1941, war veterans' housing and accommodations not rented from February 1, 1945, to January 31, 1947; defense rent areas are those designated under the 1942 Act: *203* (a) No maximum rents shall be established or maintained under the 1942 Act; *204* (a) specifies authority of the Housing Expediter and extends that office to February 29, 1948;

(b) prohibits demand for or receipt of rent in excess of the maximum established under the 1942 Act, but provides for lease and adjustment to correct inequities. The balance of the section, excepting (f), concerns decontrol procedure, and (f) fixes the termination date of the Act as February 29, 1948. (Subject to earlier decontrol in any part of the defense rental area.) *205* provides for recovery by tenants; *206* (a) makes it unlawful to demand or receive excess rents, and (b) provides jurisdiction for enforcement; *207* relates to action by tenants; *209* prohibits evictions of tenants except in certain cases; *211* provides that Title II shall apply to the several states and territories but not to the District of Columbia.

## STATEMENT.

Appellant's statement should be modified and amplified as follows:

The preliminary injunction was granted without opposition of defendants, who merely raised the constitutional question, and it was deferred for later consideration. (R. 20.) The District Court held the Act unconstitutional because it has no constitutional basis for its validity and that a technical condition of war does not confer this power upon Congress, because it unlawfully delegated legislative power and because "its effect is the taking of private property contrary to the provisions of the Constitution." (R. 25, 28.)

## SUMMARY OF ARGUMENT.

The Housing and Rent Act of 1947 is unconstitutional in three respects:

1. It operates to take property without due process of law in violation of the Fifth Amendment. The right to rent is an essential of ownership of property and the denial of the current rental is a taking. Absence of provision for hearing or appeal or for refraining from offering

the property for rent in the Act, takes away the basis of the rulings on this point sustaining the prior rent law.

2. There is an unreasonable and unlawful delegation of legislative power. The Expediter is empowered to absolutely decontrol any and all rent areas. This power was not given to the administrator by the prior rent act and decisions sustaining it are not applicable. This power to absolutely decontrol is essentially the power to repeal the act.

3. Congress lacked the power to enact a law regulating rents and possession of rental property at the time of the enactment on June 30, 1947. Its power is solely by delegation by the constitution, with implied power to carry into effect the express powers. No such regulatory power of intra-state property or transactions is provided, unless it be by war powers and then under war conditions. Emergencies other than a war emergency, widely existing similar conditions, economic or otherwise or beneficent aims, do not supply the power. Nor does Congress have a police power under which such regulations can be enacted.

The war powers, taken together, authorize any action Congress deems necessary or helpful in waging war or resisting invasion or suppressing insurrection, or defending the nation, subject to other constitutional provisions. The regulation of intra-state matters, to be valid must have some essential connection with the national defense and security. While the power always exists, it is latent until and unless conditions are present that call it into action.

On June 30, 1947, there was no actual war—no danger of renewal of hostilities. For over twenty months there had been no war except what is termed technical war—this because peace had not been declared officially. Technical war cannot furnish the power to regulate intra-state matters—otherwise Congress by refraining from declaring peace could continue such regulations indefinitely.

Congress seems to recognize the source of its power to regulate intra-state affairs such as rents and prices by its declaration in the Act of 1942, in which it declares it to be in the interest of the national defense and security and necessary to the effective prosecution of the present war.

The Act has no relation to war effort and is declared to concern the transition period and the return to peace-time economy. In this declaration Congress recognizes the termination of war conditions and the return to peace. Its war powers to regulate rents had expired.

## ARGUMENT.

### I.

### THE ACT VIOLATES THE FIFTH AMENDMENT— THE DUE PROCESS CLAUSE.

The District Court held that the effect of the Act is to take property without due process and that it is unconstitutional. The opinion of the Court and the conclusions of law so state. (R. 25, 28.) This is not assigned as an error and it is not included in the assignment of points upon which the appellant intends to rely in its appeal. (R. 32, 35.)

Under the rules of this Court it seems that this point will not be considered.

> *Rule 13. 9.* "When the record is filed, or within fifteen days thereafter, the appellant shall file with the Clerk a definite statement of the points on which he intends to rely * * *." "The Court will consider nothing but the points of law so stated."

If this is a correct conclusion from the rules of court it is submitted that the judgment of the District Court holding the law to be unconstitutional must be affirmed.

However, if this point is to be considered the appellees present their argument in support of the finding of the District Court.

The Act denies the defendants the right to a fair and reasonable rent and thereby takes from defendants the

difference between the amount of a fair and reasonable rent and the maximum rent that is established. But for the Act, higher rentals could have been secured. This is a matter of common knowledge and is in the finding of facts. (R. 25.) The right to use one's property is an essential attribute of property. Taking away this right is a taking of property.

It is stated in 12 *Am. Jur.* 355, paragraph 678:

> "The right to devote real estate to any legitimate use is property within the protection of the Constitution, such as the right to use it for advertising purposes."

*Washington ex rel. Seattle Trust Co. v. Roberg*, 278 U. S. 116;
*Mead v. Portland*, 200 U. S. 148.

And on page 343, paragraph 651:

> "An owner cannot be deprived of any of the essential attributes which belong to the right of property, such as use, enjoyment, purchase, mortgage, and sale; in fact, any contracts in relation thereto. He cannot be deprived of the increment of property or the increment of proceeds into which property has been converted."

*Chicago, R. I. & P. R. Co. v. United States*, 284 U. S. 80; *Henkels v. Sutherland*, 271 U. S. 298.

Further, in 42 *Am. Jur.*, page 189, paragraph 4:

> "Property, as heretofore defined, is composed of certain constituent elements, to-wit, the unrestricted right of use, enjoyment, and disposal of the particular subject of property. Of these elements the right of user is the most essential and beneficial. Without it all other elements would be of little effect, since if one is deprived of the use of this property, little but a barren title is left in his hands. This right of free and untrammeled user for legitimate purposes is fundamental and within the protection of the Federal Constitution. * * * The right or element of user

necessarily includes the right and power of excluding others from using the subject of property."

In *Terrace v. Thompson*, 263 U. S. 197, page 215, the Court says:

> "The Terraces' property rights in the land include the right to use, lease or dispose of it for lawful purposes (*Buchanan v. Waverly*, 245 U. S. 60, 74) and the Constitution protects these essential attributes of property (*Holden v. Hardy*, 169 U. S. 366, 391) * * *"

And in *Buchanan v. Waverly*, 245 U. S. 60, page 74.

> "Property is more than the mere thing which a person owns. It is elementary that it includes the right to acquire, use and dispose of it. The Constitution protects these essential attributes of property. *Holden v. Hardy*, 169 U. S. 366, 391. Property consists of the free use, enjoyment, and disposal of a person's acquisitions without control or diminution save by the law of the land. 1 *Blackstone's Commentaries* (Cooley's Ed.) 127."

The 1942 Act was upheld by this Court against the attack that it violated the Fifth Amendment for the reasons assigned that provision is made therein for protest by the owner and for further appeal to the Emergency Circuit Court of Appeals, and that the Act does not require an owner to rent his property. *Bowles v. Willingham*, 321 U. S. 503; pages 521 and 517. On page 521 the Court says:

> "But when Congress has provided for judicial review after the regulations or orders have been made effective, it has done all that due process under the War emergency requires."

On page 517:

> "We are not dealing here with a situation which involves a 'taking' of property." *Wilson v. Brown*, *supra* (137 Fed. 2nd 348, 352-354). "By Paragraph 4 (d) of the Act it is provided: 'Nothing in this Act shall be construed to require any person to sell any commodity or to offer any accommodations for rent.' There is no requirement that the apartments in ques-

tion be used for purposes which bring them under the Act."

*Yakus v. United States*, 321 U. S. 414.

The 1947 Act does not contain the provisions that this Court held saved the constitutionality of the 1942 Act. There is no provision for protest or for appeal. Nor does it provide that no person is required to offer any accommodation for rent, and, in addition, there is no provision in the Act that would permit the property owner to regain possession of his property for the purpose of holding off of the market. Section 209 (a) specifies the only grounds upon which a tenant may be evicted. If the property was rented on June 30, 1947, the Act, in effect, requires the owner of apartment suites to rent them, unless he wants to demolish or remodel the building.

Furthermore, the Act unjustly discriminates against defendants as owners of an apartment house. Section 202 in (c) excepts from "housing accommodations," as defined in (b), hotels, motor courts, units constructed or converted after February 1, 1947, and units not rented from February 1, 1945 to January 31, 1947.

It has been held that there is no unreasonable discrimination or classification wher the regulation is of residential property but not of non-residential property. *Taylor v. Brown*, 137 F. 2nd 654. Here, though, is the exemption of some residential property and the regulation of other forms. The distinction between a suite in a hotel, often occupied as a permanent residence, and a suite or furnished room in an apartment building, is only that in the former maid and linen service is included. Either one may or may not include furniture. As to new construction or accommodations not previously rented, there is no distinguishing feature. The discrimination is such that it comes within the principle announced in *Hirabayash v. United States*, 320 U. S. 81, at page 100:

"The Fifth Amendment contains no equal protection clause and it restrains only such discriminatory

legislation by Congress as amounts to denial of due process."

Appellant argues on page 35 of brief that the exclusions are justified because the cost of operation of the exempted units has increased considerably. The Court will take judicial notice, and it appears in the finding of facts (R. 25) that defendants' "cost of operation, of supplies, of repairs and replacements has substantially increased * * *." The Act does not make any provision for the consideration of costs in the fixing of maximum rents, which are fixed definitely as they existed on June 30, 1947.

Such discrimination at least emphasizes the taking of property without due process of law.

Since the saving provisions heretofore declared by the Court (*Bowles v. Willingham, supra,* p. 7) are not found in the Act it follows that it violates the due process clause of the Fifth Amendment.

## II.

## THE ACT IMPROPERLY DELEGATES LEGISLATIVE POWER.

The Courts have uniformly held that the 1942 Act does not improperly delegate legislative power.

The 1947 Act, however, delegates to the Housing Expediter power to terminate the Act as to controls:

> *Sec. 204 (c).* "The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

11 *Am. Jur.*, page 923:

> "The general doctrine as to the inalienability of the lawmaking function applies to the Federal Govern-

ment. Congress cannot delegate to any other body its strictly legislative powers. * * *" "In order that a court may be justified in holding a statute unconstitutional as a delegation of legislative power, it must appear that the power involved is purely legislative in nature—that is, one appertaining exclusively to the legislative department."

Article I, Section 1, Constitution;

*United States v. Shreveport Grain & Elevator Co.*, 287 U. S. 77;

*Schechter Poultry Co. v. United States*, 295 U. S. 495;

*Panama Refining Co. v. Ryan*, 293 U. S. 388.

Repeal of a law is an exclusive legislative function. *Western Union Telegraph Co. v. L. & N. R. Co.*, 258 U. S. 13.

This power delegated to the Expediter is an essential legislative power, giving to him the power to in effect repeal the effectiveness of the Act as to controls and regulation. This is not a power that may be delegated and in this respect the Act is unconstitutional.

At the time *Bowles v. Willingham, supra*, was decided, there was no provision in the 1942 Act for decontrol, so of necessity, this feature of delegation was not considered or determined.

## III.

## CONGRESS WAS WITHOUT CONSTITUTIONAL POWER TO ENACT THE HOUSING AND RENT ACT OF 1947.

### A.

### Powers of Congress are Limited to Constitutional Grant.

It is a fundamental doctrine of constitutional law that Congress has only such powers as are expressly granted to it by the constitution, together with the implied power to carry the granted powers into execution.

This is so elementary that it would not need to be mentioned were it not for the apparent conflict between

the asserted war powers and the other provisions of the constitution. But this conflict does require a consideration of the fundamentals. The absence of power given to Congress to regulate intra-state affairs and the forbidding to Congress of all powers not granted must be considered in connection with the extent and occasion for exercising war power to so regulate.

*United States v. Butler*, 297 U. S. 1.

In *Carter v. Carter Coal Company*, 298 U. S. 238, it is stated in Syllabus 7:

> "Those who framed and those who adopted the constitution meant to carve from the general mass of legislative powers, then possessed by the states, only such portions as it was thought wise to confer upon the federal government; and in order that there should be no uncertainty as to what was taken and what was left, the national powers of legislation were not aggregated but enumerated—with the result that what was not expressed by the enumeration remained vested in the states without change or impairment. P. 294."

Syllabus 9:

> "The general government possesses no inherent power over internal affairs of the states; and emphatically not with regard to legislation. P. 295."

In order to make this still more clear the Ninth and Tenth Amendments to the constitution were adopted.

## B.

## The Constitution Grants No Power to Congress to Regulate Intra-State Affairs, Such as Rents and Rental Property.

There is no express grant in the constitution empowering Congress to regulate intra-state affairs and it has been decided by this Court that the power is not granted in the following respects:

It is held in *Hammer v. Dagenhart*, 247 U. S. 251, that the commerce clause does not authorize Congress to equal-

ize economic conditions in the states or to exercise police power over local trade and manufacture, which power is "always existing expressly reserved to them" (the states) "by the tenth amendment."

It has often been held that "the police power is reserved to the states and that there is no grant thereof to Congress in the constitution." *Keller v. United States*, 213 U. S. 138; 11 *Am. Jur.*, page 989, paragraph 257; *United States v. DeWitt*, 76 U. S. 41; *Hammer v. Dagenhart, supra.*

Nor does a widespread similarity of conditions confer upon Congress the power of regulation. It is stated in *United States v. Butler*, 297 U. S. 1, decided January 6, 1936, quoting from Syllabus 17:

> "Existence of a situation of national concern resulting from similar and widespread local conditions cannot enable Congress to ignore the constitutional limitations upon its own powers and usurp those reserved to the states."

Also in *Schechter Poultry Corporation v. United States*, 295 U. S. 495, decided May 29, 1935, Syllabus 1:

> "Extraordinary conditions, such as an economic crisis, may call for extraordinary remedies, but they cannot create or enlarge constitutional powers." Page 258.

Likewise, an emergency does not supply the power. It can do nothing more than call for the exercise of an existing power.

*Home Building & Loan Association v. Blaisdell*, 290 U. S. 398, decided January 8, 1934:

Syllabus 1:

> "Emergency does not increase constitutional powers nor diminish constitutional restrictions."
>
> 11 *Am. Jur.*, page 648.

It is also well settled that the fact that a law is a beneficent law does not supply the necessary power for

Congress to so legislate even if the law is for the good of the people or tends to strengthen the government.

*Carter v. Carter Coal Company*, 298 U. S. 238, at page 291:

"* * * for nothing is more certain than that beneficent aims, however great or well directed, can never serve in lieu of constitutional power."

Also in Syllabus 6:

"The proposition, often advanced and as often discredited, that the power of the federal government inherently extends to all purposes affecting the nation as a whole with which the states severally cannot deal, or deal adequately, and the related notion that Congress, entirely apart from those powers delegated by the Constitution, may enact laws to promote the general welfare, have always been definitely rejected by this court."

*United States v. Butler, supra*:

Syllabus 1:

"The question in such cases is not what powers the federal government ought to have, but what powers have in fact been given it by the people."

Syllabus 2:

"In Article I, Paragraph 8 Cl. 1 of the Constitution * * * the phrase 'to provide for the general welfare' is not an independent provision empowering Congress generally to provide for the general welfare, but is a qualification defining and limiting the power' to lay and collect taxes. * * *"

To summarize, the power is not conferred by the commerce clause, by police power, by widespread similar local conditions, by beneficent aims of the law, by emergency, by conditions with which the states cannot deal adequately or by anyone's idea as to the powers the federal government should have.

C.

## The War Powers Did Not Empower Congress to Enact This Law on June 30, 1947.

It should be noticed that the Act makes no reference to housing shortage, emergency or otherwise, except in decontrol provisions. There is no provision in it looking to alleviating the housing shortage. It concerns rents and rents only, and possession of rental property. It is an entirely new act and is not in any sense an amendment to or continuation of the 1942 act, which concerned both rents and prices and expired according to its own terms.

### (1) The power to regulate rents not being given in the Constitution, it is denied by the Ninth and Tenth Amendments.

But it is claimed that the war powers of Congress embrace this power to legislate long after hostilities have ceased and all danger of renewal of the war has passed, on the ground that technical war still exists, peace having not been declared. This negatives the very language of the constitutional provisions which concern war, defense, repelling invasions and suppressing insurrections.

Such regulation is thoroughly foreign to federal power unless it is a part of an all out effort in the interests of national security. The power of Congress to invade the powers reserved to the states is not a technical matter, but goes to the very substance of our dual government.

In 11 *Am. Jur.*, page 869:

> "There are limits to the implied powers of Congress. If the means employed should have no substantial relation to the public objects which government may legally accomplish, if they should be arbitrarily and unreasonably beyond the necessities of the case, or if Congress in the execution of its powers should adopt measures which are prohibited by the constitu-

tion, such enactments would unquestionably be held unconstitutional and void."

*Union Bridge Company v. United States*, 204 U. S. 364.

The constitutional provision covering war powers, Article I, Section 8, is as follows:

> "To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water; to raise and support armies * * *; to provide and maintain a navy; to make rules for the government and regulation of land and naval forces; to provide for the calling forth of the militia to execute the laws of the Union, suppress insurrections and repel invasions; to provide for organizing, forming and disciplining the militia and for governing such part of them as may be employed in the service of the United States, * * *."

These are the express powers, and they are effective at all times, whether war or peace. It has been held repeatedly that they give to Congres well nigh unlimited powers in so far as the defense of the nation is concerned.

The implied power of Congress to enact the particular legislation is not necessarily dependent upon actual war nor upon technical war. It may so legislate before, during or after a war provided it has a substantial relation to the defense of the nation. Congress is the judge of the means to be taken for national defense. In enacting such legislation it has the power to determine and specify the time that it shall expire. Its power continues after cessation of hostilities, and for that matter, after official peace, as to any measures for military preparation or defense. Its power, however, to regulate such economic affairs as rents ceases when such regulation no longer concerns military defense.

The power of Congress, as ordinarily spoken of, must be considered in two different respects:—its power in a validly enacted law to fix the period of time within which

it is to be effective, and its power to enact new measures. As to the first, it may extend the law beyond official peace; but as to the second, the law must concern national security to be valid.

An act such as we are considering is an infringement upon the powers reserved to the states, and the apparently conflicting provisions of the constitution, that is the denial of the power because not delegated, and the implied powers under the war provisions, must be reconciled if the law is to be valid. This is possible only if the law is substantially related to the preservation of the nation. Necessarily, inasmuch as it relies upon war powers, this must be preservation in a military sense and not simply one of economy.

The 1947 Act was adopted long after danger to the national security had ceased and it has no substantial relation to national security.

In *Grancourt v. United States*, 258 Fed. 25:

> "The power to raise and support armies gives to Congress in wartime an authority over every branch of national life, which is well night unlimited * * *. When an army is in training or in the field, every branch of commerce or industry, even the homelife and habits of the people, may be placed under any necessary restraint to facilitate its support."

11 *Am. Jur.*, page 868:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are proper, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."

And in *United States v. Casey*, 247 Fed. 362, at page 366:

> "The war power is sovereign, and yet it is not the police power, for it is exercised to preserve the community itself rather than the health, or economy, or morals of a community."

*Northern Pacific Railway Company v. North Dakota*, 250 U. S. 135, page 149 (a) of the opinion:

> "The complete and undivided war power of the United States is not disputable. * * * On the face of the statutes it is manifest that they were in terms based upon the war power, since the authority they gave arose only because of the existence of war and the right to exert such authority was to cease upon the war's termination."

The other constitutional provisions must be observed, even in time of actual war. *Bowles v. Willingham, supra; United States v. Cohen Grocery Company*, 255 U. S. 81.

The following quotation from 11 *Am. Jur.*, page 870, is pertinent:

> "Even when circumstances may make it desirable to call into operation congressional activity not ordinarily invoked, the exercise of any powers must be evoked, and checked carefully to see if such powers actually exist under the constitutional grants, because extraordinary conditions do not create or enlarge constitutional power, and cannot justify governmental action outside the sphere of constitutional authority."

*Wilson v. New*, 243 U. S. 332; *Schechter Poultry Corp. v. United States, supra.*

The absolute necessity of maintaining the powers reserved to the states as well as those delegated to the federal government need not be argued. This is summarized in 11 *Am. Jur.*, page 865, paragraph 171:

> "The maintenance of the authority of the states over matters purely local is as essential to the preservation of our institutions as is the conservation of the federal power in all matters entrusted to the nation by the federal constitution."

If this power to enact rent regulatory laws is given to Congress by a technical state of war, Congress would have it within its power to avoid and disregard the constitutional reservation of powers to the states and the people,

as well as to assume and exercise powers the constitution does not grant to it. Congress would thus rise higher than the constitution and would in effect determine for itself what provisions it would observe and what power it would usurp.

There is nothing fanciful about this. It may be illustrated by the statement of the District Court in his opinion in *Lewis v. Anderson*, 72 F. Supp. 119. None of it is necessary for his decision as the offenses with which he was dealing were committed during the time that the 1942 Act was in effect. But the Court says on page 120:

> "Wars have never actually terminated on the day 'cease-fire' orders were given. Many of them continued for decades, not so much in the form of actual fighting, but in the disruption and dislocation which they caused in the life of the nations involved. These facts, which are truisms to any student of history, apply especially to modern warfare as exemplified by the last war. The destruction and dislocation of the economic life of both the victor and the vanquished continue and will continue for years after actual hostilities with Germany and Japan ended. And so those who are in charge of regulating and controlling the economic life of the nations involved in war have the difficult problem of determining when the various controls should come to an end. Wishful and unrealistic thinking call for immediate cessation of all government interference with economic life. Prudent statesmanship, economic or other, realizes the danger of immediate decontrol—for economic life cannot stand sudden shocks. Adjustment from war to peacetime economy, if it is to be helpful, must be gradual."

Whether this is good economics or not it is an expression of the theory upon which Congress endeavors to regulate rents. Incidentally, all the court decided in this case was that an act of Congress does not terminate unless the statute says so.

The situation is serious. Sustaining the power of Congress to enact the Act at the time and under the conditions,

would enormously increase the power of Congress beyond the plain meaning of the constitution. Not only as to the length of time it can continue to enact local regulations, but also as to the character and extent of the regulations that it could impose. Certainly there is no intention embodied in the constitution that Congress shall be the judge of its own powers.

**(2) Validity of the Act is Not Supported by Prior Decisions.**

It is submitted that this Court has not in any decided cases laid down a principle under which this act can be sustained. Each case is distinguishable upon the facts and the statements of the Court do not necessarily apply here.

In each of the following cases cited in appellant's brief, the issue was whether a validly enacted war measure had expired because of the armistice. *United States v. Armstrong*, 265 Fed. 683; *Hamilton v. Kentucky Distillery & Warehouse Co.*, 251 U. S. 146 (The Act prohibited "the liquor traffic as a means of increasing our war efficiency"); *Ruppert v. Caffey*, 251 U. S. 264 (decided on the same ground); *Ex parte Sichofsky*, 273 Fed. 694; *Fleming v. Mohawk Wrecking & Lumber Co.*, 331 U. S. 111; *Kahn v. Anderson*, 255 U. S. 1; *Vincenti v. United States*, 272 Fed. 114 (War Prohibition Act enacted for the

> "purpose of conserving the man power of the nation and to increase the efficiency in the production of arms and munitions, ships, food and clothing for the army and navy * * *.")

and *Commercial Trust Co. v. Miller*, 262 U. S. 51.

Some of the acts considered fixed the termination at the conclusion of the war and others at a given period thereafter, or after demobilization, to be determined and proclaimed by the President. None of them consider the power to enact except for a war purpose. They do uphold the power of Congress to specify in a war act the

time of its expiration. As stated in *Commercial Trust Co. v. Miller, supra,*

> "The power which declared the necessity is the power to declare its cessation, what the cessation requires."

They also hold that none of the acts became ineffective by changed conditions, before the time specified for termination.

These issues are not involved here, as the question is the power to enact. It is quite apparent that the Court in construing a law to determine when it expires is not laying down a principle necessarily applicable to the expiration of the war powers of Congress to enact new regulatory laws. When the Court says in such a case that the end of the war means the official declaration of its end, it is not necessarily saying that the war power to enact new legislation necessarily continues until that time.

The power of Congress to legislate concerning the armed forces and make rules governing them is always effective—the Constitution is explicit. The control of entry of aliens and over enemy property, of course, continues until official peace and thereafter until all such matters are resolved.

The war power to regulate inter-state affairs is another matter. The 1942 Act provided for a definite date of termination. When the last extended date passed the act terminated. The principle that Congress may fix the date of termination does not help the 1947 Act.

One of the first decided cases that dealt with the war powers is *Stewart v. Kahn,* 78 U. S. 493. There is a statement by the Court, page 506:

> "It carries with it inherently the power to guard against the immediate renewal of the conflict, and to remedy the evils which have arisen from its rise and progress."

The case itself concerned an act passed during active hostilities and it was clearly war legislation and was so held. Its purpose was to save the rights of citizens to whom

the courts of the states in rebellion were not open, by extending the period of the statute of limitations by the time during which the courts were not available. The action was brought after the courts of the State of Louisiana were opened to all citizens and after the termination of the Civil War. The law itself fixed the extended time. The evil the court speaks of was that the courts were not open to a resident of the North during the hostilities. The Court, of course, in 1867 did not have in mind any situation comparable to the rent act and was not considering the power to legislate after national danger had ceased. It dealt with a situation that was created by the rebellion and at the very beginning of the war. Its correction was completed by an extension of the time within which to file a lawsuit in a court that was not open to citizens of the North during hostilities.

The 1942 Act was enacted during actual and critical wartime and was a valid exercise of the war powers of Congress. This was declared in numerous cases and apparently was never seriously questioned. *Yakus v. United States, supra*, 422. *Bowles v. Willingham, supra.* These are the authoritative cases sustaining the 1942 Act but the principal questions in the cases concerned a claim that the due process clause was violated and that the delegation was unreasonable.

These cases, however, do not furnish authority for sustaining the power of Congress on June 30, 1947, to regulate rents. The nation was still engaged in all-out war on the day the decisions were announced. The invasion of Europe had not even been launched. It was a serious and critical period of the war.[1]

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[1] The cases cited in paragraph on pages 9 and 10, appellant's brief, all pass upon the 1942 Act, as do *Bowles v. Ormesher Bros.*, 65 F. Supp. 791, decided May 16, 1946, *Lewis v. Anderson*, 72 F. Supp. 119, *Bowles v. Severinsky*, 65 F. Supp. 809, and *Porter v. Granite State Packing Co.*, 155 F. 2nd 786, cited on page 16.

*(Continued on following page)*

In the first case it is stated on page 419:

"The Act was adopted as a temporary wartime measure and provides in Paragraph 1 (b) for its termination on June 30, 1943, unless sooner terminated by presidential proclamation or concurrent resolution of Congress. By the amendatory act of October 2, 1942 it was extended to June 30, 1944. Section 1 (a) declares that the act is 'in interest of national defense and security and necessary to the effective prosecution of the present war; * * *.'"

The 1947 Act became a law some twenty-three months after the surrender of Japan and six months after the President had proclaimed the cessations of the hostilities. The Act is a new law and had for its purpose only the regulation of rents and recovery of possession of rental property. It does not declare a *housing* emergency exists —merely an emergency. The declaration of Congress was vitally different from that in the 1942 Act.

**(3) Congressional Declaration Negatives a Defense Purpose.**

It is asserted that Congress does not need to make any declaration in order to support its legislation. Be this as it may, Congress does seem to customarily include a declaration in acts that it passes as war measures, and apparently for the purpose of giving them a basis in law. The decided cases in which the 1942 Act was considered time and again refer to the congressional declarations and attach great importance to the war purpose disclosed by them in sustaining its validity.

It is well established that "a declaration by a legislature concerning public conditions that of necessity and

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(*Continued from preceding page*)

*Porter v. Shibe*, 158 F. 2nd 68 and *Creedon v. Warner-Holding Co.*, 162 F. 2nd 115, cited on same page, uphold the retroactive provision of the Price Extension Act of 1946. In *Creedon v. Stratton*, 74 F. Supp. 170, cited on page 15, the court says the constitutional question was abandoned in the briefs. The unreported District Court decisions cited are not available.

duty it must know is entitled to great respect." *Block v. Hirsh*, 256 U. S. 135. *East New York Bank v. Hahn*, 326 U. S. 230.

The 1942 Act, as stated, declared it to be "necessary for the effective prosecution of the present war" and to be "in the interest of national defense and security." (Sec. 1 (a).) The 1947 Act contains no such declaration and makes no reference to war, defense or security. This omission, by the same principle, is entitled to great respect. It is important also to note that it declares in Section 201 (a) the continuance of federal controls "to be inconsistent with a return to peacetime economy," and in (b) "that for the prevention of inflation and the achievement of a reasonable stability in the general level of rents during the transition period * * * it is necessary for a limited time to impose certain restrictions upon rents * * *."

What construction is to be placed upon this declaration, especially as compared to the declaration in the 1942 Act? The Price Control Extension Act enacted on July 25, 1946, speaks of the "return to a peacetime economy." The 1947 Act became a law almost a year later. It seems that the peacetime economy exists concurrently with the technical war.

Appellant's brief, p. 17, endeavors to inject into the Act a declaration invoking the war power by its reference in Section 201 (a) and (b) to the Price Control Extension Act of 1946. The reference, however, is specific and is to the declaration regarding controls in the return to a peacetime economy, which became Sec. 1 A (a) (2) in the 1942 Act as amended.

### (4) The Housing and Economic Situation Does Not Supply the Power.

In the understanding of the Appellees there is no issue here as to economic conditions and it is not vital whether the rent situation has cleared up. In any event it does not supply the power unless related to the national defense.

lengthy quotations from Congressional hearings are set forth by appellant. They have little weight, because Congress included its declarations in the law it actually enacted.

The actual situation relative to defense activities and peacetime economy may be illustrated by the Cleveland area. In 1942 to the end of hostilities not only were men and women being taken into the armed services in large numbers, but the productive facilities of the area were devoted almost exclusively to furnishing munitions and instruments of war, and clothing, food and supplies for the army, navy and air forces. In June, 1947, all of this activity had ceased and the government was disposing as surplus of the materials the area had furnished. Definitely, the activities then as now were in a peacetime economy.

But it is argued that there is a housing emergency and that in order to control inflation and to preserve a place to live for the people in defense areas Congress must control rents, keep rents at their 1941 level and give tenants a non-contract lease for the period of the law. There are serious questions as to the effect of the law; it certainly does not tend to create more places to live. Also it is urged that although there is a small vacancy rate, an uncontrolled increase in rents would result in enormous eviction pressure. But again, merely because Congress deems the law to be beneficent or to strengthen the government, or to be useful in correcting an economic crisis, does not enlarge its power or supply a basis for using its war powers.

*Schechter Poultry Corporation v. United States, supra; Home Building and Loan Association v. Blaisdell, supra; Carter v. Carter Coal Co., supra; United States v. Butler, supra.*

The Act clearly related to internal economic situation, not to defense.

For these reasons appellees do not consider the data relative to housing in appellant's brief (pp. 18, 19, 21 to 30) to have any bearing on the issue here. The wisdom of the

legislation is a matter for Congress to determine, but it must first have the power.

There is a pertinent statement as to the exercise of power by Congress in *Linder v. United States*, 268 U. S., page 5, Syllabus 1:

> "Any provision of an Act of Congress ostensibly under power granted by the constitution, not naturally and reasonably adapted to the effective exercise of such power, but solely to the achievement of something plainly within the power reserved to the states, is invalid and cannot be enforced."

## CONCLUSION.

The judgment below should be affirmed.

Respectfully submitted,

PAUL S. KNIGHT,
*Attorney for Appellees.*

# APPENDIX.

## Housing and Rent Act of 1947.

(Pub. L. 129, 80th Cong., 1st Sess.)

### TITLE II—MAXIMUM RENTS

DECLARATION OF POLICY.

SEC. 201. (a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.

(b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures designed to minimize delay in the granting of necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted.

DEFINITIONS.

SEC. 202. As used in this title—

(a) The term "person" includes an individual, corporation, partnership, association, or any other organized

group of persons, or a legal successor or representative of any of the foregoing.

(b) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or

(2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations.

(d) The term "defense-rental area" means any part of any area designated under the provisions of the Emer-

gency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were being regulated under such Act on March 1, 1947.

(e) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

TERMINATION OF RENT CONTROL UNDER EMERGENCY PRICE CONTROL ACT OF 1942.

SEC. 203. (a) After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

(b) On the termination of rent control under this title all records and other data used or held in connection with the establishment and maintenance of maximum rents by the Housing Expediter, and all predecessor agencies, shall, on request, be delivered without reimbursement to the proper officials of any State or local subdivision of government that may be charged with the duty of administering a rent control program in any State or local subdivision of government to which such records and data may be applicable: *Provided, however,* That any such records or data shall be so made available subject to recall for use in carrying out the purposes of this title.

RENT CONTROL UNDER THIS TITLE.

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948.

(b) During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand, accept, or receive any rent

for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title.

(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met.

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions

of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

(e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

(A) Decontrol of the defense-rental area or any portion thereof;

(B) The adequacy of the general rent level in the area; and

(C) Operations generally of the local rent office, with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropriate action shall promptly be taken to carry such recommendation into effect.

(4) Immediately upon the enactment of this Act the Housing Expediter shall communicate with the governors

of the several States advising them of the provisions of this subsection and of the number and location of defense-rental areas in their respective States, and requesting their cooperation in carrying out such provisions.

(f) The provisions of this title shall cease to be in effect on February 29, 1948.

RECOVERY OF DAMAGES BY TENANTS.

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided*, That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

PROHIBITION AND ENFORCEMENT.

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

MAINTENANCE OF ACTIONS FOR CERTAIN ALLEGED PAST VIOLATIONS.

SEC. 207. No action or proceeding, involving any alleged violation of Maximum Price Regulation Numbered 188, issued under the Emergency Price Control Act of 1942, as amended, shall be maintained in any court, or judgment thereon executed or otherwise proceeded on, if a court of competent jurisdiction has found, or by opinion has declared, that the person alleged to have committed such violation acted in good faith and that application to such person of the "actual delivery" provisions of such regulation would result or has resulted in extreme hardship.

EVICTION OF TENANTS.

SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

(4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or

(5) the housing accommodations are nonhousekeeping, furnished housing accommodations located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided,* That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants

of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

# SUPREME COURT OF THE UNITED STATES

No. 486.—October Term, 1947.

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| Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, v. The Cloyd W. Miller Company, a Corporation, and Cloyd W. Miller. | Appeal from the District Court of the United States for the Northern District of Ohio. |

[February 16, 1948.]

Mr. Justice Douglas delivered the opinion of the Court.

The case is here on a direct appeal, Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. § 349 (a), from a judgment of the District Court holding unconstitutional Title II of the Housing and Rent Act of 1947. Pub. L. 129, 80th Cong., 1st Sess., — U. S. C. —.

The Act became effective on July 1, 1947, and the following day the appellee demanded of its tenants increases of 40% and 60% for rental accommodations in the Cleveland Defense-Rental Area, an admitted violation of the Act and regulations adopted pursuant thereto.[1] Appellant thereupon instituted this proceeding under § 206 (b)

[1] Section 204 (b) of the Act provides that "no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947." Controlled Housing Rent Regulation, 12 Fed. Reg. 4331, contains similar provisions. §§ 2 (a), 4 (a). Provisions of this statute and regulation, not here material, allow adjustment of maximum rentals when necessary to correct inequities and permit a 15% increase if negotiated between landlord and tenant and incorporated in a lease of a designated term.

of the Act[2] to enjoin the violations. A preliminary injunction issued. After a hearing it was dissolved and a permanent injunction denied.

The District Court was of the view that the authority of Congress to regulate rents by virtue of the war power (see *Bowles* v. *Willingham*, 321 U. S. 503) ended with the Presidential Proclamation terminating hostilities on December 31, 1946,[3] since that proclamation inaugurated "peace-in-fact" though it did not mark termination of the war. It also concluded that even if the war power continues, Congress did not act under it because it did not say so, and only if Congress says so, or enacts provisions so implying, can it be held that Congress intended to exercise such power. That Congress did not so intend, said the District Court, follows from the provision that the Housing Expediter can end controls in any area without regard to the official termination of the war,[4] and from the fact that the preceding federal rent

[2] Section 206 (a) makes it unlawful "to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204." Section 206 (b) authorized the Housing Expediter to apply to any federal, state, or territorial court of competent jurisdiction for an order enjoining "any act or practice which constitutes or will constitute a violation of subsection (a) of this section."

[3] Proclamation 2714, 12 Fed. Reg. 1. That proclamation recognized that "a state of war still exists." On July 25, 1947, on approving S. J. Res. 123 terminating certain war statutes, the President issued a statement in which he declared that "The emergencies declared by the President on September 8, 1939, and May 27, 1941, and the state of war continue to exist, however, and it is not possible at this time to provide for terminating all war and emergency powers."

[4] Section 204 (c) provides: "The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

control laws (which were concededly exercises of the war power) were neither amended nor extended. The District Court expressed the further view that rent control is not within the war power because "the emergency created by the housing shortage came into existence long before the war." It held that the Act "lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress" because of the authorization to the Housing Expediter to lift controls in any area before the Act's expiration. It also held that the Act in effect provides "low rentals for certain groups without taking the property or compensating the owner in any way." See — F. Supp. —.

We conclude, in the first place, that the war power sustains this legislation. The Court said in *Hamilton* v. *Kentucky Distilleries Co.*, 251 U. S. 146, 161, that the war power includes the power "to remedy the evils which have arisen from its rise and progress" and continues for the duration of that emergency. Whatever may be the consequences when war is officially terminated,[5] the war power does not necessarily end with the cessation of hostilities. We recently held that it is adequate to support the preservation of rights created by wartime legislation, *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U. S. 111. But it has a broader sweep. In *Hamilton* v. *Kentucky Distilleries Co.*, *supra*, and *Ruppert* v. *Caffey*, 251 U. S. 264, prohibition laws which were enacted after the Armistice in World War I were sustained as exercises of the war power because they conserved manpower and increased efficiency of production in the critical days during the period of demobilization, and helped to husband the supply of grains and cereals depleted by the war effort. Those cases followed the reasoning of *Stewart* v. *Kahn*, 11 Wall. 493, which held

[5] See *Commercial Trust Co.* v. *Miller*, 262 U. S. 51, 57.

that Congress had the power to toll the statute of limitations of the States during the period when the process of their courts was not available to litigants due to the conditions obtaining in the Civil War.

The constitutional validity of the present legislation follows *a fortiori* from those cases. The legislative history of the present Act makes abundantly clear that there has not yet been eliminated the deficit in housing which in considerable measure was caused by the heavy demobilization of veterans and by the cessation or reduction in residential construction during the period of hostilities due to the allocation of building materials to military projects.[6] Since the war effort contributed heavily to that deficit, Congress has the power even after the cessation of hostilities to act to control the forces that a short supply of the needed article created. If that were not true, the Necessary and Proper

[6] See H. R. Rep. No. 317, 80th Cong., 1st Sess., pp. 1, 2, 3, 10–11. The Report states, p. 2:

"There are several factors, in addition to the normal increase in population, which have contributed to the existing housing shortage. These include demobilization of a large number of veterans, shifts in population, less intensive use of housing accommodations, amount of new housing construction, trend away from construction of rental units, and change from tenant to owner occupancy."

As to the effect of demobilization of veterans the Report states, p. 2:

"Heavy demobilization of members of our armed forces, particularly in late 1945 and the first half of 1946, made effective an important demand for housing accommodations. In 1945 an estimated 6,279,000 veterans of World War II were returned to civilian life, in 1946 the number so returned was 5,659,000, and in 1947 to February 28 an additional 212,000 veterans were demobilized. Statistics are not available as to the number of new family units created by returning veterans but undoubtedly the figure is substantial and in many cases creation of new family units was delayed until these veterans were returned to civilian life. The importance and delayed

Clause, Art. I, § 8, cl. 18, would be drastically limited in its application to the several war powers. The Court has declined to follow that course in the past. *Hamilton* v. *Kentucky Distilleries Co.*, *supra*, pp. 155, 156; *Ruppert* v. *Caffey*, *supra*, pp. 299, 300. We decline to take it today. The result would be paralyzing. It would render Congress powerless to remedy conditions the creation of which necessarily followed from the mobilization of men and materials for successful prosecution of the war. So to read the Constitution would be to make it self-defeating.

We recognize the force of the argument that the effects of war under modern conditions may be felt in the economy for years and years, and that if the war power can be used in days of peace to treat all the wounds which war inflicts on our society, it may not only swallow up all other powers of Congress but largely obliterate the Ninth and the Tenth Amendments as well. There are no such implications in today's decision. We deal here with the consequences of a housing deficit greatly intensified during the period of hostilities by the war effort. Any power, of course, can be abused. But we cannot assume that Congress is not alert to its consti-

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impact of the 11,938,000 veterans returned to civilian life in 1945 and 1946 on an already acute housing shortage is readily apparent."

The effect of the war upon the construction of new dwelling units is shown by the following table:

*Total non-farm dwelling units constructed*

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|---|---|---|---|
| 1937 | 336,000 | 1943 | 350,000 |
| 1938 | 406,000 | 1944 | 169,000 |
| 1939 | 515,000 | 1945 | 247,000 |
| 1940 | 603,000 | 1946 | 776,200 |
| 1941 | 715,000 | 1947 (11 months) | 799,000 |
| 1942 | 497,000 | | |

The figures for the years 1937–1945 inclusive are taken from H. R. Rep. No. 817, *supra*, p. 3. Those for 1946 and 1947 are taken from U. S. Bureau of Labor Statistics, Construction, Dec. 1947, p. 4.

tutional responsibilities. And the question whether the war power has been properly employed in cases such as this is open to judicial inquiry. *Hamilton* v. *Kentucky Distilleries Co., supra; Ruppert* v. *Caffey, supra.*

The question of the constitutionality of action taken by Congress does not depend on recitals of the power which it undertakes to exercise. Here it is plain from the legislative history that Congress was invoking its war power to cope with a current condition of which the war was a direct and immediate cause.[7] Its judgment on that score is entitled to the respect granted like legislation enacted pursuant to the police power. See *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543.

Under the present Act the Housing Expediter is authorized to remove the rent controls in any defense-rental area if in his judgment the need no longer exists by reason of new construction or satisfaction of demand in other ways.[8] The powers thus delegated are far less extensive than those sustained in *Bowles* v. *Willingham, supra*, pp. 512–515. Nor is there here a grant of unbridled administrative discretion. The standards prescribed pass muster under our decisions. See *Bowles* v. *Willingham, supra*, pp. 514–516, and cases cited.

Objection is made that the Act by its exemption of certain classes of housing accommodations[9] violates the

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[7] See H. R. Rep. No. 317, *supra*, note 6, and statement of Representative Wolcott, Chairman of the House Committee on Banking and Currency which reported the rent bill, 93 Cong. Rec. 4395.

[8] See note 4, *supra*.

[9] Sec. 202 (c) provides: "The term 'controlled housing accommodations' means housing accommodations in any defense-rental area, except that it does not include—(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnish-

Fifth Amendment. A similar argument was rejected under the Fourteenth Amendment when New York made like exemptions under the rent-control statute which was here for review in *Marcus Brown Co.* v. *Feldman, supra,* pp. 195, 198–199. Certainly Congress is not under greater limitations. It need not control all rents or none. It can select those areas or those classes of property where the need seems the greatest. See *Barclay & Co.* v. *Edwards,* 267 U. S. 442, 450. This alone is adequate answer to the objection, equally applicable to the original Act sustained in *Bowles* v. *Willingham, supra,* that the present Act lacks uniformity in application.

The fact that the property regulated suffers a decrease in value is no more fatal to the exercise of the war power (*Bowles* v. *Willingham, supra,* pp. 517, 518) than it is where the police power is invoked to the same end. See *Block* v. *Hirsh, supra.*

*Reversed.*

MR. JUSTICE FRANKFURTER concurs in this opinion because it decides no more than was decided in *Hamilton* v. *Kentucky Distilleries Co.,* 251 U. S. 146, and *Jacob Ruppert* v. *Caffey,* 251 U. S. 264, and merely applies those decisions to the situation now before the Court.

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ing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or (2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or (3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations."

# SUPREME COURT OF THE UNITED STATES

No. 486.—October Term, 1947.

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| Tighe E. Woods, Housing Expediter, Office of the Housing Expediter, Appellant, *v.* The Cloyd W. Miller Company, a Corporation, and Cloyd W. Miller. | Appeal from the District Court of the United States for the Northern District of Ohio. |

[February 16, 1948.]

Mr. Justice Jackson, concurring.

I agree with the result in this case, but the arguments that have been addressed to us lead me to utter more explicit misgivings about war powers than the Court has done. The Government asserts no constitutional basis for this legislation other than this vague, undefined and undefinable "war power."

No one will question that this power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by the Judges under the influence of the same passions and pressures. Always, as in this case, the Government urges hasty decision to forestall some emergency or serve some purpose and pleads that paralysis will result if its claims to power are denied or their confirmation delayed.

Particularly when the war power is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care.

I think we can hardly deny that the war power is as valid a ground for federal rent control now as it has been at any time. We still are technically in a state of war. I would not be willing to hold that war powers may be indefinitely prolonged merely by keeping legally alive a state of war that had in fact ended. I cannot accept the argument that war powers last as long as the effects and consequences of war for if so they are permanent—as permanent as the war debts. But I find no reason to conclude that we could find fairly that the present state of war is merely technical. We have armies abroad exercising our war power and have made no peace terms with our allies not to mention our enemies. I think the conclusion that the war power has been applicable during the lifetime of this legislation is unavoidable.